

Message Text

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SUBJECT: CANADIAN NARCOTICS LAWS

REF: STATE 170187

SUMMARY: FOLLOWING ARE ANSWERS TO QUESTIONS POSED IN STATE
REFTEL AS THEY PERTAIN TO CANADA. ANSWERS ARE KEYED TO
ORDER USED IN REFTEL, AND ARE BASED ON THE TWO PRIMARY
CANADIAN LAWS IN THE DRUG FIELD: THE NARCOTIC CONTROL
ACT AND THE FOOD AND DRUG ACT (COPIES BEING POUCHED S/NM).
DRUG ENFORCEMENT IN CANADA IS LARGELY A FEDERAL MATTER.
THE CRIMINAL CODE IS FEDERAL, AS ARE THE NARCOTIC CONTROL
ACT AND THE FOOD AND DRUG ACT. IN TERMS OF ENFORCEMENT
AGENCIES, THE FEDERAL RCMP SERVES AS THE PRIMARY ACTION
ARM, BUT FEDERAL STATUTES ALLOW ANY PEACE OFFICER TO
ENFORCE DRUG LAWS.

1. POSSESSION: (A) YES, THERE IS DIFFERENTIATION IN
CANADIAN LAW FOR POSSESSION OF VARIOUS DRUGS. THE NAR-
COTIC CONTROL ACT SPECIFIES 15 CLASSES OF SUBSTANCES AS
NARCOTICS IN ITS SCHEDULE N-1. AMONG THESE ARE THE
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OPIUM POPPY (PAPEVER SOMNIFERUM) AND SELECTED DERIVATIVES,
COCA (ERYTHROXYLON) AND DERIVATIVES AND MARIJUANA
(CANNABIS SATIVA) IN BOTH THE LEAF AND RESIN FORMS.

CONTROLLED DRUGS, SUCH AS AMPHETAMINES, BARBITURATES/
BARBITURIC ACID/, BENZPHETAMINE, BUTORPHANOL,
METHAMPHETAMINE, PENTAZOCINE, PHENDIMETRAZINE, PHENMETRA-

ZINE, METHAQUALONE, AND THIBARBITURIC ACID, ARE COVERED BY SCHEDULE G OF THE FOOD AND DRUGS ACT, AND THERE IS NO, RPT NO, POSSESSION OFFENSE REGARDING THESE SUBSTANCES. IN CONTRAST, THERE ARE POSSESSION OFFENSES REGARDING A NUMBER OF DRUGS CLASSIFIED AS "RESTRICTED DRUGS" UNDER SCHEDULE H OF THE FOOD AND DRUGS ACT. LSD (LYSERGIC ACID DIETHYLAMIDE), DET (DIETHYLTRYPTAMINE), AND DMT (DIMETHYLTRYPTAMINE) ARE AMONG THE 22 SUBSTANCES CLASSIFIED AS RESTRICTED DRUGS.

POSSESSION OF NARCOTICS IS PROHIBITED BY SECTION 3(1) OF THE NARCOTIC CONTROL ACT, AND POSSESSION OF RESTRICTED DRUGS IS PROHIBITED UNDER SECTION 41(1) OF THE FOOD AND DRUG ACT, WHICH ALLOWS CERTAIN LICENSED DEALERS, QUALIFIED INVESTIGATORS, RCMP AND OTHER POLICE OFFICERS, AND OFFICERS OF THE DEPT. OF NATIONAL HEALTH AND WELFARE TO POSSESS RESTRICTED DRUGS. AS STATED BEFORE, THERE IS NO POSSESSION OFFENCE REGARDING CONTROLLED DRUGS, BUT POSSESSION FOR TRAFFICKING IS DIFFERENT. (B) THERE IS NO QUALIFYING AMOUNT FOR POSSESSION UNDER CANADIAN LAW. THE PRESIDING JUDGE IN EACH CASE MUST MAKE AN INDIVIDUAL DETERMINATION, BASED ON A READING OF THE EVIDENCE AND CIRCUMSTANCES AT HEAND.

(C) PENALTIES: PENALTIES FOR POSSESSION OF BOTH NARCOTICS AND RESTRICTED DRUGS UNDER CANADIAN LAW ARE LESS SEVERE
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THAN FOR TRAFFICKING OR IMPORTING. FOR POSSESSION OF NARCOTICS, SECTION 3(2) (A) OF THE NARCOTIC CONTROL ACT PROVIDES FOR PENALTIES "UPON SUMMARY CONVICTION FOR A FIRST OFFENCE, TO A FINE OF ONE THOUSAND DOLLARS OR TO IMPRISONMENT FOR SIX MONTHS OR TO BOTH FINE AND IMPRISONMENT, AND FOR A SUBSEQUENT OFFENCE, TO A FINE OF TWO THOUSAND DOLLARS OR TO IMPRISONMENT FOR ONE YEAR OR TO BOTH FINE AND IMPRISONMENT...." FOR RESTRICTED DRUG POSSESSION, SECTION 41 (2) (A) OF THE FOOD AND DRUG ACT PROVIDES FOR THE SAME PENALTIES AS IN THE NARCOTICS PROVISION CITED HERE. TECHNICALLY, IT SHOULD BE NOTED THAT BOTH SECTIONS OF LAW HAVE ADDED PROVISIONS CALLING FOR MUCH HEAVIER PENALTIES FOR POSSESSION OFFENSES WHEN A "CONVICTION ON INDICTMENT" IS MADE, INCLUDING IMPRISONMENT FOR 7 YEARS IN THE CASE OF NARCOTICS, AND A FINE OF FIVE THOUSAND DOLLARS AND/OR IMPRISONMENT FOR 3 YEARS IN THE CASE OF RESTRICTED DRUGS, BUT AS A MATTER OF PRACTICE INDICTMENT PROCEEDINGS ARE SELDOM USED IN POSSESSION CASES.

2. TRAFFICKING: A) CANADIAN LAW DIFFERENTIATES TRAFFICKING OFFENSES ACCORDING TO THE THREE-TIERED SYSTEM ALREADY

DESCRIBED: NARCOTICS, CONTROLLED DRUGS, AND RESTRICTED DRUGS. FOR NARCOTICS, TRAFFICKING IS PROHIBITED BY SECTION 4(2) OF THE NARCOTIC CONTROL ACT. FOR CONTROLLED DRUGS, TRAFFICKING AND POSSESSION FOR THE PURPOSE OF TRAFFICKING, IS PROHIBITED UNDER SECTION 34(1) AND SECTION 34 (2) OF THE FOOD AND DRUG ACT. FOR RESTRICTED DRUGS, TRAFFICKING AND POSSESSION FOR THE PURPOSE OF TRAFFICKING ARE PROHIBITED UNDER SECTION 42 (1) AND 42 (2) OF THE FOOD AND DRUGS ACT.

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(B) PENALTIES: FOR TRAFFICKING, THERE IS NO, RPT NO, MINIMUM PENALTY, AND THE MAXIMUM PENALTY IS LIFE IMPRISONMENT UNDER SECTION 4 (3) OF THE NARCOTIC CONTROL ACT WHICH SPECIFIES FOR CONTROLLED DRUGS, PROCEEDING BY INDICTMENT TRAFFICKING AND POSSESSION FOR THE PURPOSE OF TRAFFICKING, INVOLVE A PRESCRIBED MAXIMUM PENALTY OF IMPRISONMENT FOR 18 MONTHS UNDER SECTION 34 (3) OF THE FOOD AND DRUGS ACT. FOR RESTRICTED DRUGS, TRAFFICKING OR POSSESSION FOR THE PURPOSE OF TRAFFICKING DRAW THE SAME MAXIMUM PENALTY AS FOR CONTROLLED DRUGS, AND THE APPLICABLE SECTION OF THE FOOD AND DRUGS ACT IS 42 (3)

(A). CONVICTION ON INDICTMENT PENALTIES REGARDING BOTH CONTROLLED AND RESTRICTED DRUGS CALL FOR A MAXIMUM SENTENCE OF 10 YEARS IMPRISONMENT. PROCEEDING BY SUMMARY CONVICTION OR INDICTMENT IS THE OPTION OF THE CROWN PROSECUTOR. THERE ARE CANADIAN PROVISIONS FOR SPECIAL PROVISIONAL LIBERTY, INCLUDING BAIL, RELEASE ON PERSONAL RECOGNIZANCE, AND PAROLE, AND THESE ARE WIDELY USED IN ALL REGIONS OF THE COUNTRY. IN A SIMILAR WAY TO THAT USED IN THE UNITED STATES, BAIL AND RELEASE ON PERSONAL RECOGNIZANCE MUST BE DECIDED BY THE ARRAIGNING JUDGE, AND THESE DECISIONS

WILL TAKE INTO ACCOUNT A NUMBER OF FACTORS, INCLUDING
REPUTATION IN THE COMMUNITY, AND LIKELIHOOD OF THE
ACCUSED TO RESPECT THE TERMS OF PROVISIONAL LIBERTY.
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(C) ELEMENTS OF THE OFFENSE(S): THERE IS NO SPECIFIED
AMOUNT ON WHICH TO BASE A CHARGE OF POSSESSION IN
NARCOTICS CONTROLLED DRUGS, OR RESTRICTED DRUG CASES UNDER
CANADIAN LAW. IT IS UP TO THE DECISION OF THE PRESIDING
JUDGE, WHO TAKES INTO ACCOUNT THE EVIDENCE AND THE
CIRCUMSTANCES AT HAND.

(D) RELATED CRIMINAL OFFENSES: CANADIAN LAW DIFFERENTIATES
BETWEEN THE OFFENSES OF TRAFFICKING AND IMPORTING AND
EXPORTING OF NARCOTICS AND ALSO INCLUDES SEPARATE
SPECIFICATIONS FOR CONSPIRACY TO TRAFFIC OR IMPORT. THE
ACTION OF IMPORTING AND EXPORTING NARCOTICS IS FORBIDDEN
BY SECTION 5 (1) OF THE NARCOTIC CONTROL ACT, WHICH IN
SECTION 5 (2) SPECIFIES A MINIMUM PENALTY OF 7 YEARS
IMPRISONMENT AND A MAXIMUM OF LIFE IMPRISONMENT. THE
QUESTION OF JUST WHAT DIFFERENCES CHARACTERIZE IMPORTING/
EXPORTING AND TRAFFICKING IS A VERY AMBIGUOUS ONE, AND
IS THE SUBJECT OF CONSIDERABLE LEGAL DEBATE IN CANADA
TODAY. IF A PERSON IS APPREHENDED IN THE ACT OF IMPORTING
OR EXPORTING NARCOTICS IN CANADA, IT IS UP TO THE POLICE
AND THE PROSECUTOR (CALLED THE CROWN ATTORNEY IN MOST
REGIONS OF CANADA) TO DECIDE WHETHER THE CHARGE SHOULD BE
TRAFFICKING OR IMPORTING/EXPORTING. INTERNAL GUIDELINES
SET BY THE DEPT. OF JUSTICE INVOLVE AT LEAST SIX
CRITERIA: COMMERCIAL SIGNIFICANCE OF THE DRUGS; PRIOR
CRIMINAL RECORD OF THE SUSPECT; TYPE OF ROLE WITHIN THE
DRUG OPERATION; ACTUAL QUANTITY OF DRUGS APPREHENDED; AND
WILLINGNESS TO SUPPLY THE POLICE WITH INFORMATION WHICH
COULD CRACK A MAJOR DRUG RING REGARDING CONSPIRACY, THE
PROVISIONS OF SECTION 423 OF THE CANADIAN FEDERAL CRIMINAL
CODE ARE VERY BROAD, AND APPLY TO MANY OTHER AREAS OF
CRIME BESIDES NARCOTICS OFFENSES. THE KEY PROVISION IS SS
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CONTAINED IN SUBSECTION (2) OF SECTION 423, AND STATES: :
"EVERY ONE WHO CONSPIRES WITH ANY ONE TO EFFECT AN
UNLAWFUL PURPOSE, OR TO EFFECT A LAWFUL PURPOSE BY UN- -
LAWFUL MEANS, IS GUILTY OF AN INDICTABLE OFFENSE AND IS
LIABLE TO IMPRISONMENT FOR TWO YEARS."

3. CULTIVATION, PRODUCTION ELABORATION: (A) THE CULTIVATION OF CANNABIS (MARIJUANA), COCA AND THE OPIUM POPPY (BUSH AND LEAVES) ARE EACH PROHIBITED BY CANADIAN LAW. FOR BOTH MARIJUANA AND THE OPIUM POPPY, THE PROHIBITION IS MADE BY SECTION 6(1) OF THE NARCOTIC CONTROL ACT, WHICH PERMITS SPECIAL CULTIVATION UNDER LICENSE. THE PENALTY FOR CULTIVATION IF EITHER DRUG IS IMPRISONMENT UP TO A MAXIMUM OF SEVEN YEARS UNDER SECTION (6) (2) OF THE NARCOTIC CONTROL ACT.

(B) WHILE CULTIVATION IS GENERALLY PROHIBITED, THERE ARE PROVISIONS FOR SPECIAL EXEMPTIONS TO CULTIVATE UNDER LICENCE ISSUED BY THE MINISTER OF NATIONAL HEALTH AND WELFARE, AND THESE LICENCES ARE GIVEN TO RESEARCH PROJECTS ONLY. THERE IS NO COMMERCIAL CULTIVATION OR DISTRIBUTION IN CANADA.

(C) THERE ARE PENALTIES FOR ELABORATING NARCOTICS SUBSTANCES FROM CANNABIS (MARIJUANA), COCA AND THE OPIUM POPPY, BUT THESE ARE INCLUDED WITHIN THE GENERAL PROVISIONS FOR POSSESSION OR POSSESSION FOR THE PURPOSE OF TRAFFICKING. THE APPLICABLE SECTIONS OF LAW ARE SECTION 3 (1) AND SECTION 4(2) OF THE NARCOTIC CONTROL ACT.

4. FINANCIAL ASPECTS: (A) THERE ARE NO SEPARATE OFFENSES UNDER CANADIAN LAW RELATING TO FINANCIAL SUPPORT FOR

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CULTIVATION, ELABORATION OR TRAFFICKING IN NARCOTICS. UNDER CURRENT PRACTICE, FINANCIAL ASPECTS WOULD BE CONSIDERED WITHIN THE LARGER BOUNDARIES OF CHARGES FOR CULTIVATION, ELABORATION OR TRAFFICKING AND PROSECUTORS AND POLICE DO FOCUS ON THESE ASPECTS WHEN ANALYZING SPECIFIC CASES, AND WEIGH THESE FACTORS CAREFULLY.

(B) CANADA DOES NOT, RPT NOT, HAVE CURRENCY CONTROL LAWS REGARDING EXPORT OF CANADIAN CURRENCY OR FOREIGN BANK ACCOUNTS.

5. CRIMINAL PROCEDURE: (A) CANADIAN LAW PROVIDES FOR A PERIOD OF 24 HOURS OF INVESTIGATIVE DETENTION, AND IN PRACTICE THIS IS OBSERVED VERY CONSISTENTLY. CONSULAR ACCESS IS PERMITTED DURING THIS PERIOD. CANADIAN AUTHORITIES WILL NOTIFY THE NEAREST US CONSULATE OR THE EMBASSY OF ARRESTS OF US CITIZENS PROMPTLY UPON REQUEST OF THE ARRESTEE. WITHOUT THE REQUEST OF THE ARRESTEE, CANADIAN OFFICIALS WOULD NOT NORMALLY NOTIFY THE CONSULATE OR EMBASSY.

(B) CUSTOMARY LENGTH OF PRE-TRIAL DETENTION IN CANADA IS RELATIVELY SHORT AND VARIES GREATLY, BECAUSE MOST ARRESTEES CAN ACHIEVE BAIL OR, IN MANY CASES, RELEASE UPON PERSONAL RECOGNIZANCE. SECTION 454 OF THE CANADIAN UNCLASSIFIED

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CRIMINAL CODE STIPULATES THAT IF A PERSON IS DENIED BAIL OR OTHER FORM OF PROVISIONAL LIBERTY, THEN HE MUST BE PRESENTED BEFORE THE COMMITTING MAGISTRATE EVERY SEVEN DAYS WHILE AWAITING TRIAL.

(C) AVERAGE LENGTH OF THE TRIAL PROCESS VARIES GREATLY, DEPENDING ON A NUMBER OF CIRCUMSTANCES, SUCH AS THE OVERLOADED DOCKETS OF MOST COURTS AND THE NATURE OF THE CHARGES. CURRENT CANADIAN PRACTICE PERMITS A TRIAL TO BE HELD ANYTIME BETWEEN THREE DAYS AND TWO YEARS AFTER ARREST, ALTHOUGH MOST TRIALS FOR FELONIES TAKE PLACE ONE TO THREE YEARS AFTER ARREST. DURATION OF A TRIAL PROCEEDING ITSELF MAY LAST FROM THREE DAYS UP TO SEVERAL MONTHS.

(II) REVIEW AND CONFIRMATION PROCEEDINGS TAKE A VARYING LENGTH OF TIME IN CANADA.

(III) THE APPELLATE PROCESS IN CANADA WILL VARY GREATLY IN LENGTH OF TIME BETWEEN DECISION OF A COURT OF FIRST JURISDICTION AND OUTCOME OF AN APPEAL.

(D) LEGAL COUNSEL IS AVAILABLE TO DEFENDANTS WHO ARE DESTITUTE AND THESE PROGRAMS OF LEGAL AID OPERATE AT NO COST TO THE DEFENDANT. LEGAL AID PROGRAMS ARE CONDUCTED BY THE BAR ASSOCIATIONS IN EACH PROVINCE OF CANADA. FOREIGN DEFENDANTS, WHO CAN DEMONSTRATE THAT THEY ARE DESTITUTE CAN QUALIFY FOR SUCH LEGAL AID.

(E) YES, THERE ARE PROVISIONS FOR PAROLE IN CANADIAN LAW. INMATES SENTENCED UNDER FEDERAL STATUTES TO DEFINITE, NON-LIFE, TERMS OF INPRISONMENT BECOME ELIGIBLE FOR PAROLE AFTER SERVING ONE-THIRD OF THE TERM, UNCLASSIFIED

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OR SEVEN YEARS, WHICHEVER COMES FIRST. THE CANADIAN NATIONAL PAROLE BOARD IS COMPRISED OF NINETEEN MEMBERS, WITH HEADQUARTERS IN OTTAWA AND REGIONAL OFFICES IN VANCOUVER, SASKATOON, KINGSTON, MONTREAL AND MONCTON.

(F) THE DECISION OF WHETHER OR NOT TO DISMISS A MINOR OFFENDER RESTS WITH THE PRESIDING JUDGE UNDER THE CANADIAN LEGAL SYSTEM. ENDERS

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